S.B. CIVIL WRIT PETITION NO. 3538/2007.

(RAMESH KUMAR VAIRAGHI VS.STATE & OTHERS)

DATE OF ORDER : 27.09.2007.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Ranjeet Joshi for the petitioner.
Mr. S.N. Tiwari, Dy. Government Advocate.
Mr. Sachin Acharya for respondent No.2.

By this petition for writ, a challenge is given to validity, propriety and correctness of the order dated 31.05.2007 passed by learned Civil Judge (Senior Division) No.3, Udaipur accepting an election petition preferred by Shri Varda as per Section 43 of Rajasthan Panchayati Raj Act, 1994 read with Rule 80 of Panchayat Election Rules, 1994. Respondent Shri Varda assailed election of return candidate Shri Ramesh s/o Shri Haridas Vairagi on the ground that he incurred a disqualification as a consequent to birth of his daughter Baby Priyanka on 27.11.1995 or 08.02.1996 and i.e. in violation of the provisions of Section 19(1)(iv) of the Act of 1994.

Learned court below after considering the entire evidence available on record, reached at the conclusion that the date of birth of Baby Priyanka was 08.02.1996 and the petitioner only with a view to acquire qualification to contest election for a Panchayat Raj Institution and to save himself from the

disqualification borrowed the birth certificate on 30.12.2004 with 18.03.1994 as certified date of birth of his third daughter .

I have examined the order impugned and other record available. It is not in dispute that the date of birth of Baby Priyanka (third daughter of the petitioner) was shown as 08.02.1996 in her school certificate, school admission register and also in other relevant documents. It is also not in dispute that the petitioner obtained birth certificate from the Registrar only three months prior to the date of election wherein the date of birth of petitioner's daughter was shown as 28.03.1994. Learned court below on basis of available evidence reached at a specific conclusion that the actual date of birth of third child of the petitioner is 28.03.1994 and thus, the petitioner suffered disqualification as per provisions of Section 19(1)(iv) of the Act of 1994. The finding given by the learned trial court is based on sound appreciation of evidence available on record, hence, it does not warrant any interference of this Court under Article 227 of the Constitution of India.

Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR)J.

Anil/